

JOB ASSISTANCE ORDINANCE

SMC 14.17 • Use of Criminal Records in Employment Decisions



Fairness.



Opportunity.



A Second Chance.

OPPORTUNITY works for SEATTLE

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□ **This Issue Impacts Us All**

- ▣ Incarceration rate has tripled since 1980 and is 7x the historic average.
- ▣ More than 1 in 4 adults has a criminal record.

□ **Racial Disparities**

- ▣ African Americans are 3.8% of state population but are 19% of state's prison population.
- ▣ Native Americans are 1.8% of state population but are 4.3% of the state's prison population.
- ▣ Blanket exclusions from employment based on criminal history have a disparate impact on communities of color.

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□ **Awareness Project: We are all criminals**

- ▣ What about the 75% that does not have a criminal record?
- ▣ What about the ones that got away?
- ▣ How would their lives have been different if they been caught?
- ▣ Minnesota - <http://www.weareallcriminals.com/>

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□ **Fairness, Opportunity, Second Chance**

- ▣ Employment is a key factor in reducing recidivism.
- ▣ Increased employment opportunities will strengthen our community
 - Increase employment opportunity
 - Reduce recidivism
 - Reduce racial disparities
 - Improve public safety

Job Assistance Ordinance (JAO)

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- SMC 14.17
- Effective November 1, 2013
- Sets limits on use of criminal history records in employment decisions for jobs in Seattle
 - ▣ Employers may still conduct background checks
 - ▣ Ordinance effects timing and requires follow-up

Coverage

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□ **Employers**

- ▣ City of Seattle
- ▣ Private employers with one or more employees
- ▣ Location of employer does not matter

□ **Applicants and Employees**

- ▣ People who perform substantial part of services in Seattle
- ▣ Substantial = at least 50%

Exceptions

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- Federal, state or other local government employers
- Law enforcement
- Policing
- Crime prevention
- Security
- Criminal justice
- Private investigation services
- **Unsupervised Access**
 - ▣ Children under sixteen years of age
 - ▣ People with developmental disabilities
 - ▣ Vulnerable adults

Unsupervised Access

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- ❑ **Unsupervised access ≠ incidental contact.**
- ❑ **Incidental contact**
 - ▣ Minor or casual contact in an area that is within visual or auditory range of others and includes passing a person while walking down a hallway.
 - ▣ Does not include being alone for any period of time in a location that is not within the visual or auditory range of others. See RCW 43.43.830.

REQUIREMENTS

Job Ads

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- Prohibits categorical exclusions in job ads
 - ▣ “Felons need not apply”
 - ▣ “No criminal background”
 - ▣ ? “Must pass background check”
 - ▣ ? “Must successfully clear background check”

Questions & Background Checks

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- Delays criminal history inquiries **until after** an initial screening to eliminate unqualified applicants
 - Review of applicant's skills & experience
 - Determination that applicant meets minimum job qualifications

Arrests

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- Prohibits adverse action based solely on arrest record
 - ▣ Adverse Action = denial of job, termination, etc.
 - ▣ Arrest is not proof of unlawful conduct

Conduct relating to arrest, Pending criminal charge & Convictions

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❑ Pre-Adverse Action

- ❑ Requires **reasonable opportunity** to explain or correct criminal history information before employer takes an adverse action based solely on criminal record
- ❑ Requires a **legitimate business reason** if employer decides to take an adverse action based solely on criminal record

Reasonable Opportunity

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- ❑ Provide notice of potential adverse action
- ❑ Identify information & records that led to decision
- ❑ Hold job open for 2 business days
- ❑ Consider explanation, corrections and verifiable information of good conduct & rehabilitation
 - ❑ Written or oral statement from applicant or employee, parole or probation officer, clergy member, social worker, etc.
 - ❑ Certificate of rehabilitation, completion or enrollment in an educational or vocational training program, etc.

Legitimate Business Reason

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- Employer believes in good faith that nature of criminal conduct either:
 - ▣ Will have a negative impact on the employee's or applicant's fitness or ability to perform the position sought or held, or
 - ▣ Will harm or cause injury to people, property, business reputation, or business assets

Legitimate Business Reason

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- Employer has considered the following factors:
 - ▣ Seriousness of crime
 - ▣ Number and types of convictions or pending charges;
 - ▣ Time that has elapsed since conviction or pending charges, excluding periods of incarceration;
 - ▣ Verifiable information re: good conduct & rehab;
 - ▣ Specific duties and responsibilities of the position; and
 - ▣ Place and manner in which the position will be performed.

ENFORCEMENT



Seattle Office for Civil Rights

▣ **ADVANCE OPPORTUNITY. ACHIEVE EQUITY.**

- ▣ Enforce laws regarding discrimination, paid sick & safe time, and the use of criminal records in employment
- ▣ Support employer compliance
- ▣ Provide policy recommendations & outreach
- ▣ Coordinate Race & Social Justice Initiative
- ▣ Coordinate Task Force on Gender Pay Equity



Support for Employers

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□ TECHNICAL ASSISTANCE

- ▣ 206-684-4500
- ▣ ocr_criminalrecordsquestions@seattle.gov
- ▣ Questions & Group Presentations

□ WEB SITE

- ▣ <http://www.seattle.gov/civilrights/criminalrecords.htm>
- ▣ Administrative Rules, Chapter 80
- ▣ FAQs, brochures, posters, etc.

Employee Complaints

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- **GOAL = COMPLIANCE**
 - ▣ **First Violation**
 - Notice of Infraction & Technical Assistance
 - ▣ **Second Violation**
 - Penalty up to \$750
 - ▣ **Subsequent Violation**
 - Penalty up to \$1000
 - ▣ **Hearing Examiner**
 - Penalties plus attorney fees
- **SETTLEMENT = ALWAYS AN OPTION**

Tips

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□ **Before Charge...best practices**

- Document, document, document
- Create job descriptions with minimum & desired qualifications
- Contact SOCR for technical assistance
- Request employer extension

□ **After Charge**

- Consider early resolution and/or settlement
- Provide detailed response and documentation
- Call investigator for questions and updates

Contact Information

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□ **Seattle Office for Civil Rights**

810 Third Avenue South, Suite 750

Seattle, WA 98104

206-684-4500

<http://www.seattle.gov/civilrights/>

□ **Karina Bull, Business Liaison**

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